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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,986	08/07/2006	Martin Geier	23296	8305
535	7590	12/11/2007		
K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900			EXAMINER ROWAN, KURT C	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/539,986

Applicant(s)

GEIER ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 36-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____                                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/17/2005</u>   | 6) <input type="checkbox"/> Other: ____                           |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 36, 40, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Cross (US 1478424)

The patent to Cross shows an insect trap having a generally hollow body 1, 7, 8, 9 with a foraminous wall region 7. Cross shows a fan 3 in the body 1 for expelling air through the region. Cross shows a means 7 on the body for holding insects attracted by the air stream. The examiner notes the use of "means for" and is giving the claims their broadest reasonable interpretation at the present time. If applicant wishes the claims to be interpreted in light of 35 USC 112, sixth paragraph, please state so on the record in response to this Office Action. In reference to claim 40, Cross shows the body formed with a passage 8 having an opening adjacent the region and of a cross-sectional size equal to substantially less than the predetermined area, that is of the foraminous material. Cross shows the fan having an intake connected to only to the passage and an output connected only to the foraminous region. In reference to claim 44, Cross shows the foraminous region to be a mesh as shown in Fig. 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 37-39, 41-43, 44, 45-49, 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross (US 1478424).

The patent to Cross shows an insect trap as discussed above. Cross does not disclose the air speed displaced by the fan. However, in reference to claims 37-39, and 41-43, it would have been obvious to employ the recited air speeds since routine experimentation would be used to determine the optimum air speed. In reference to claim 44, Cross does not show the foraminous region as a generally horizontal upper surface of the upper end of the body, but a generally horizontal lower surface of the lower end of the body, but it would have been obvious to employ a generally horizontal upper surface of the upper end of the body since merely a rearrangement of the location of part is contemplated and the function is the same. See *In re Japikse*, 86 USPQ 70. In reference to claim 46, Cross shows the body centered on an upright axis. In reference to claims 47 and 54, see the rejection of claim 40, above. In reference to claim 48, Cross shows the body having a substantially closed floor 1 underneath the fan as shown in Fig. 1 and substantially closed side walls 8 extending axially between the floor and the upper end of the body. In reference to claim 49, Cross shows the side walls form an upright tubular cylinder 8 centered on the axis. In reference to claim 53

Cross does not disclose a lightly colored foraminous region and a dark coating on the inner surface of the passage, but it would have been obvious to provide Cross with a lightly colored foraminous region and a dark coating on an inner surface of the passage since insects tend to be attracted to dark colors and fly to the light.

5. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cross as applied to claims 36-48 above, and further in view of Cody (US 5167090).

The patent to Cross shows a suction insect trap and has been discussed above. Cross does not show a screen in the passage upstream of the fan intake. The patent to Cody shows a suction insect trap having a screen 21 upstream of fan 20 as shown in Figs. 1-2. In reference to claim 50, it would have been obvious to provide Cross with a screen upstream of the fan intake to prevent undesirable objects from contacting the fan blades.

Claims 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross as applied to claims 36-48 above, and further in view of Wigton (US 6145243).

The patent to Cross shows an insect trap as discussed above and does not disclose an attractant being emitted into the air stream through the region and out of the body. The patent to Wigton shows a suction insect trap having an attractant 134 emitted in to the air stream as shown in Fig. 3 noting column 9, lines 11-16. In reference to claims 51-52, it would have been obvious to provide Cross with a chemical attractant such as octenol as shown by Wigton for the purpose of attraction more insects to the trap.

6. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cross as applied to claim 46 above, and further in view of Focks et al. (US 4282673).

The patent to Cross shows a suction insect trap as discussed above. Cross does not show a cover for the body suspended spacedly above the body and orientated to shield the body from above. The patent to Focks shows a body 21 having a cover 29 suspended spacedly above the body 21. In reference to claim 55, it would have been obvious to provide Cross with a cover as shown by Focks to prevent the fan motor from the elements.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Zimmerman, Woodruff, Smith, and Weimert show other insect traps using suction.

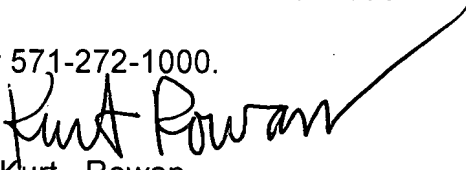
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR